



July 23, 2022

VIA FEDEX

Judge John R. Adams
2 South Main Street, Suite 510
Akron, Ohio 44308

Re: *Miller v. Anderson, et al.*, Case No. 20-CV-1743 (N.D. Ohio)

Dear Judge Adams,

I write on behalf of my client John Donovan, a former employee and a current shareholder of FirstEnergy Corp. ("FirstEnergy"), in connection with the Court's July 13, 2022, order in the above-referenced action, inviting counsel to notify the Court of their interest in representing the interests of FirstEnergy.

In view of the Court's order, I respectfully apply to serve as Mr. Donovan's counsel in this action and to pursue derivative relief on behalf of FirstEnergy. I am the Chairman of Boies Schiller Flexner LLP and have over 50 years of experience litigating complex cases, including having served as co-lead counsel in several of the largest cases in history.¹

I and my firm have substantial experience as lead or co-lead counsel in several multidistrict and nationwide representative actions, including class and derivative actions. I am just completing service, for example, as one of two co-lead counsel in *In re Blue Cross Blue Shield Antitrust Litigation* (N.D. Ala.), which resulted in a settlement of \$2.7 billion on behalf of consumers nationwide, as well as injunctive relief that Judge Proctor, who is presiding over the case, described as "historic." For this representation, my firm and our co-lead counsel were awarded the Outstanding Antitrust Achievement in Private Law Practice award by the American Antitrust Institute. I also recently served on the Plaintiffs' Steering Committee in *In re Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation* (N.D. Cal.), where we achieved a recovery of \$15 billion, including up to \$10 billion of direct consumer relief, in less than a year. I also served on the Plaintiffs' Executive Committee of the *In re General Motors LLC Ignition Switch*

¹ I have been selected as one of the 100 Most Influential People in the World by *Time Magazine*, Global International Litigator of the Year by *Who's Who Legal* (seven times), Litigator of the Year by the *American Lawyer*, Lawyer of the Year by the *National Law Journal* (twice), runner-up Person of the Year by *Time Magazine*, and Best Lawyers in America for more than 25 years.



Litigation (S.D.N.Y.), which resulted in a \$121.1 million settlement that received final approval on December 18, 2020. In addition, I am currently serving as co-lead counsel of the economic damages track in *In re Takata Airbag Product Liability Litigation* (S.D. Fla.), where we have so far recovered \$1.5 billion in settlements for class members. I also served as lead counsel in *Erica P. John Fund Inc., et al. v. Halliburton Company, et al.*, C.A. 02-CV-01152 (N.D. Tex.), where we achieved a settlement of \$100 million on behalf of shareholders, after prior class counsel had recommended a settlement of \$6 million.

My firm also has a strong white collar investigations practice, led by former federal prosecutors and Department of Justice trial lawyers who have deep experience with high-stakes, high-profile white collar civil and criminal actions, both on the prosecution and defense side. On the prosecution side, for example, my partner Matthew Schwartz led the government's investigation and prosecution of Bernard L. Madoff Investment Securities, and my partner John Kucera led the government's multibillion dollar forfeiture proceedings related to 1MDB, the Malaysian Sovereign Wealth Fund. On the defense side, our team has represented a variety of entities and individuals in connection with high-profile investigations or actions brought by the DOJ, FinCEN, the FTC, the UN Security Council, other governmental entities, and shareholders.

In each of these contexts, my firm and I have a proven track record of dedicating the time and resources necessary to litigate large-scale cases effectively. For example, in the *Blue Cross Blue Shield* case, I personally attended more than 30 hearings and status conferences in person in Birmingham, Alabama, my firm committed more than 50,000 hours of attorney time (including more than 5,000 hours of my time) on behalf of the consumers we represented, and my firm alone has invested more than \$7.5 million in out-of-pocket expert and other expenses.

I pledge my best effort to this Court to manage this litigation in a professional and effective manner. This includes a pledge to devote and maintain the appropriate financial resources necessary to fund the litigation and to ensure that FirstEnergy's interests are appropriately protected and pursued, notwithstanding the existence of parallel proceedings.

I have attached a brief profile of my firm as Exhibit A. If the Court would like, we would be pleased to submit a formal motion to appoint Mr. Donovan as lead plaintiff and my firm as lead counsel to seek derivative relief on behalf of FirstEnergy. We look forward to participating in the anticipated hearing on these matters at the Court's convenience.

Respectfully submitted,

/s/ David Boies
David Boies

BSF

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EXHIBIT A



BOIES SCHILLER FLEXNER

Boies Schiller Flexner LLP ("BSF") is one of the nation's preeminent litigation firms. BSF is selected by major corporations, institutions, and individuals who have a choice of any attorney in the world for their most important matters. Since its founding in 1997, BSF has handled a number of prominent and high-stakes litigation matters, of which the following is a representative sample:

- Achieving a **\$4.1 billion recovery** for American Express in its antitrust case against VISA and Mastercard relating to exclusionary practices governing bank partnerships – the largest recovery ever for a private plaintiff in an antitrust case
- Secured preliminary approval (final approval pending) of a **\$2.7 billion settlement** with Blue Cross Blue Shield over antitrust allegations that BCBS health plans divided insurance markets throughout the country and agreed not to compete with one another across those markets
- Serving as co-lead counsel for the class of vitamins purchasers and achieving a **settlement of over \$1 billion** in *In re Vitamins Antitrust Litigation*, as well as a jury verdict of over \$50 million (pre-trebling) against the defendants that did not settle
- Winning a jury verdict against SAP that awarded a **\$1.3 billion judgment** to Oracle, which was the largest ever verdict in a copyright infringement case
- Representing Al Gore in his litigation before the **United States Supreme Court** and the courts of Florida in connection with the recount litigation associated with the 2000 U.S. Presidential election
- Representing the **US Government** as lead counsel in its successful antitrust trial against Microsoft
- Representing the victims of **Jeffrey Epstein and Ghislaine Maxwell** in bringing the underage sex trafficking to public light and in generating prosecutions in New York after years of prosecutors and the press largely ignoring the misconduct
- Representing Barclays in the longest bankruptcy trial in American history and appeals to the SDNY and Second Circuit; defeated a **\$13 billion** claim and recovered approximately \$8.3 billion of additional assets on its contractual claims against the Lehman Bankruptcy Estate and the SIPC Trustee

WHAT OTHERS SAY

Boies Schiller Flexner has earned a world-class reputation for our highly successful practice. As early as 2001, BSF was described by The National Law Journal as a firm of "casual brilliance." The American Lawyer has characterized BSF as "A Galaxy of Bright Lights," and Lawdragon called the firm "the most powerful litigation turbine in America." We strive every day, in every matter, to build upon that reputation, to achieve exceptional results for our clients, and to remain the firm that our clients will always want to entrust with their most significant matters.

THE NATIONAL
LAW JOURNAL

"The firm from its inception has focused on preparing cases for trial from the first day of the case."

The Washington Post

"...known as the go-to law firm for high-stakes, high-profile litigation—what executives and corporate lawyers call 'bet the company' cases"

THE
AMERICAN LAWYER

"One of America's most successful and sought-after law firms for cases that matter."



CLASS AND OTHER REPRESENTATIVE ACTIONS

BSF has served as lead or co-lead plaintiff's counsel in numerous complex representative actions, involving a variety of claims. Since its inception, BSF has negotiated record settlements and won substantial verdicts on behalf of plaintiffs in several prominent cases.

The firm handles a multitude of representative actions. Our unique experience of representing both defendants and plaintiffs allows for a particular advantage, resulting in favorable outcomes for our clients. The firm's work includes a broad range of representing classes in consumer cases, antitrust, corporate governance, securities fraud, and employment cases. Our lawyers work efficiently and strategically at all stages of litigation to obtain meaningful recoveries. When trial threatens, our track record of success in the courtroom serves as an effective spur to negotiation.

- **Takata Airbags:** Obtained \$1.5 billion in settlements with auto manufacturers in multidistrict litigation over defective airbags supplied by Takata
- **Volkswagen:** Represented a nationwide class of consumers suing Volkswagen for knowingly installing software designed to cheat emissions tests in order to deceive federal and state regulators, resulting in a nearly \$15 billion settlement
- **Fresh Del Monte Produce:** Won summary judgment for Fresh Del Monte Produce, affirmed by the Fourth Circuit, in a class action alleging that our client monopolized the market for extra sweet pineapples; class sought \$1 billion in damages for alleged patent misuse
- **O'Bannon v. NCAA:** Served as co-lead trial counsel for O'Bannon and a class of other former college athletes resulting in a federal judge issuing an injunction against the NCAA's rules that prevent athletes from earning money from the use of their names and images in television broadcasts and video games
- **NBA Players:** Represented the NBA players in their historic class action lawsuit against the NBA, accusing the league of conspiring to deny them their right to offer their services in the pro basketball market through an unlawful group boycott and price fixing arrangement; resulted in a settlement that allowed the players to return to work and saved the 2011-2012 NBA season
- **In re Auction Houses Litigation:** Served as lead counsel on behalf of the plaintiff class of auction house sellers and buyers against Christie's and Sotheby's and negotiated a \$512 million settlement
- **In re: Polyurethane Foam Antitrust Litigation:** Acted as co-lead counsel for the class in the federal court in Ohio, the firm secured over \$440 million in settlements with manufacturers of flexible polyurethane foam who faced allegations of coordinating price increases to fix prices
- **Anwar v. Fairfield:** Acted as co-lead counsel in the most successful shareholder recovery for investors in the Bernard Madoff Ponzi scheme resulting in more than \$235 million in recovery for investors
- **Au Pair Class Action:** Represented plaintiffs in a nationwide class action alleging violations of state and federal employment laws, as well as antitrust and state unfair competition laws; obtained a \$65.5 million settlement on behalf of the class, the largest employment law settlement of the year
- **In re Municipal Derivatives Antitrust Litigation:** Served as co-lead counsel for plaintiffs in an antitrust case concerning price-fixing of municipal derivatives; the firm recovered \$223 million in settlements; our work on this case received the award for the Outstanding Antitrust Litigation Achievement in Private Law Practice from the American Antitrust Institute



CLASS AND OTHER REPRESENTATIVE ACTIONS

- The firm has served as co-lead counsel in *In re Cardizem CD Antitrust Litigation*, MDL No. 1278, Civil Action No. 99-cv-732589 and 99-cv-73870 (E.D. Mich. 2002) (**\$110 million recovery**), in *In re Buspirone Antitrust Litigation*, MDL No. 1413, Civil Action No. 01-CV- 7951 (JAK) (S.D.N.Y. 2002) (**\$220 million recovery**), and *In re Terazosin Hydrochloride Antitrust Litigation*, MDL No. 1317, Civil Action No. 99- 7143-Civ-Seitz (S.D. Fla.) (**\$75 million recovery**)
- **Erica P. John Fund v. Halliburton:** Represented plaintiffs in securities action which took 14 years, repeat visits to the Fifth Circuit Court of Appeals, and produced two major wins for plaintiffs in the United States Supreme Court, the firm obtained a \$100 million settlement for the plaintiffs
- **Florida Children on Medicaid:** Led a 10-year pro bono case brought on behalf of the more than 2 million Florida children that, after a 93-day federal trial, resulted in a sweeping favorable decision, and led to improved medical and dental care for the children on Medicaid
- **LCD Price-Fixing Litigation:** Represented 12 corporate opt-out plaintiffs in antitrust litigation against the world's largest LCD manufacturers, and obtained favorable resolutions through settlement for all 12 clients, achieving total settlements of more than \$500 million, an amount in excess of 150% of the plaintiffs' damage claims and more than 5 times what they would have recovered from the class action
- **CRT Price-Fixing Litigation:** Represented 9 corporate opt-out plaintiffs in antitrust litigation against the world's largest cathode ray tube (CRT) manufacturers, and obtained favorable resolutions through settlement for all 9 clients with settlements over \$250 million, more than 6-10 times what they would have recovered from the class action
- **In re Generic Pharmaceuticals Pricing and Antitrust Litigation:** Representing a large health insurer as an opt-out plaintiff in a price-fixing case against generic drug makers described as potentially "the largest cartel case in the history of the U.S."
- **Broiler Chicken Antitrust Litigation:** Representing multiple major poultry purchasers in one of the largest antitrust cases in the country; the lawsuit alleges that 20 chicken producers inflated the price of broiler chickens through a long-running conspiracy to restrain production, manipulate price indices, fix prices, and rig bids
- **United HealthCare Services v. Cephalon:** Represented a large health insurer as an opt-out plaintiff in affirmative litigation against pharmaceutical manufacturers regarding the drug Provigil, which resulted in resolution of all claims via settlement approaching the brink of the jury trial
- **In re Capacitors Antitrust Litigation:** Representing Arrow Electronics as an opt-out plaintiff in a multidistrict litigation cartel case, involving a worldwide price-fixing conspiracy of capacitors with a total claim for recovery in excess of \$200 million

"They're fantastic. They are absolutely trial lawyers, and they're extremely responsive and intelligent."

-Client feedback from
Chambers & Partners



GLOBAL INVESTIGATIONS & WHITE COLLAR DEFENSE

When cases involve sensitive, complex, and high-profile regulatory or criminal investigations, our lawyers draw on their deep experience and established track record to successfully manage every aspect of the dispute.

Because we are, first and foremost, trial lawyers, we consider how each engagement would play out in a courtroom. This approach enables us to negotiate favorable outcomes on behalf of our clients.

Lawyers in the Global Investigations and White Collar Defense group include former federal prosecutors and DOJ trial lawyers, former federal regulators, state and local prosecutors, and former in-house counsel in leadership positions. We use our experience running investigations and prosecuting matters globally to strategize on behalf of our clients. We also leverage this experience when called upon to work with federal prosecutors and regulators, including DOJ, SEC, CFTC, IRS, FTC, FinCEN, and OFAC, state Attorneys General, Congress, and many other global regulatory agencies.

REPRESENTATIVE MATTERS

- **Dragon Global Management LLC:** Secured a complete victory against the FTC for private equity firm Dragon Global Management LLC and its founder, Robert Zangrillo, in connection with allegations that they were complicit in running a series of websites, such as DMV.com, that deceptively advertised to consumers that the websites offered government services
- **Bridgeporth (UK):** Lead counsel in a UN Security Council investigation into alleged violations of Libya sanctions; no action has been taken against our client
- **Amazon CEO Jeff Bezos:** Lead counsel in a US government investigation into the National Enquirer's parent company, AMI, which had threatened to publish nude selfies of Bezos; a report determined that individuals linked to Saudi Arabia had compromised his phone
- **Major Financial Institution:** Advised a major financial institution in connection with an FCPA investigation into bribery in Western Europe
- **Former Malaysian Prime Minister:** Represent former Prime Minister Najib Razak and his stepson Riza Aziz in connection with allegations of embezzlement, foreign corruption; obtained dismissal of criminal charges against Mr. Aziz in Malaysia; settled all civil forfeiture claims against property owned by Mr. Aziz in the US
- **BTA Bank:** Represent client in international investigations of fraud and money laundering resulting from the theft of billions of dollars from a Kazakhstani bank by its former Chairman; interface with regulators and law enforcement in multiple jurisdictions; litigate victim claims to recover stolen assets.
- **Group of Institutional Investors:** Acting as lead counsel for a group of institutional investors in respect of a £1 billion-plus claim being brought against a major natural resources company, under Section 90 of the Financial Services & Markets Act 2000 (FSMA)
- **Jefferies Financial Group:** Conducted a six-month internal investigation on behalf of a special committee of the board of directors after a shareholder accused the top three executives at Jefferies of misusing corporate aircraft for their personal benefit
- **Ripple Labs:** Represented Silicon Valley-based Ripple Labs in the first ever DOJ and FinCEN enforcement action against a digital currency company for AML violations
- **Aviron Pictures CEO William Sadleir:** Serving as lead trial counsel for Sadleir, who has been charged criminally in both the Southern District of New York and the Central District of California in separate cases, as well as civilly by the Security and Exchange Commission in New York. Both cases involve allegations of fraud



ABOUT US

BSF is a firm of internationally recognized trial lawyers, crisis managers, and strategic advisors known for its creative, aggressive, and efficient pursuit of success for our clients.

Our attorneys have an established track record of taking on and winning complex, groundbreaking, and crossborder matters in diverse circumstances and industries. From the thorniest, most high-stakes matters to straightforward business disputes, we have a knack for identifying the strongest arguments, understanding the benefits of each, and determining when and how to deploy them in a case. We use the law as a tool to drive value and mitigate risk. We treat every case from its inception as though it is headed to trial, relentlessly and methodically developing the factual record in a way that positions us for success.

We build deep relationships with clients, allowing us to advise them in any matter and any forum, and we regularly represent them as both plaintiffs and defendants. Everything we do for our clients is intended to advance their interests while helping them evaluate the costs, benefits, and risks of litigation. Clients benefit from our experience on more than 450 trials before juries and judges in federal and state courts throughout the United States and more than 200 international arbitration proceedings around the world.

DIVERSITY, EQUITY & INCLUSION

Our firm is dedicated to fostering a diverse and inclusive work environment that supports the recruitment, retention, and advancement of women and men of all backgrounds, at all levels of the firm. We believe that teams with diverse viewpoints and perspectives are critical to providing creative solutions to the unique challenges of our global client base.

We have a proven commitment at the firm, in the legal profession, and in society as a whole.

- Certified under Mansfield 5.0 for our commitment to diversity
- High-potential BSF attorneys participate in Pathfinder and Fellow Programs
- Recognized with DFA's "Tipping the Scale" award for having a partner class of 50% or more women
- Scored 100 percent on Human Rights Campaign's Corporate Equality Index for the sixth year
- The only law firm recognized in Seramount's first Global Inclusion Index

RECOGNIZED FOR EXCELLENCE

